



441 G St. N.W.  
Washington, DC 20548

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January 29, 2020

The Honorable Lisa Murkowski  
Chairman  
The Honorable Joe Manchin  
Ranking Member  
Committee on Energy and Natural Resources  
United States Senate

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Greg Walden  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Energy (DOE) entitled “Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers” (RIN: 1904-AD01). We received the rule on January 14, 2020. It was published in the *Federal Register* as a final rule on January 10, 2020. 85 Fed. Reg. 1592. The effective date of the rule is March 10, 2020.

The final rule amends conservation standards for certain commercial packaged boilers. According to DOE, the final rule discontinues the use of draft type as a criterion for equipment classes and establishes separate equipment classes for “very large” commercial packaged boilers. As a result, DOE states the total number of equipment classes has increased from 10 to 12. The final rule includes minimum thermal efficiencies, or combustion efficiencies, for each equipment class.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on January 10, 2020, but not received by Congress until January 14, 2020. 85 Fed. Reg. 1592. The rule has a stated effective date of March 10, 2020, but compliance with the new energy standard is not required until January 10, 2023. To the extent that the rule purports to be effective on March 10, 2020, it does not have the required 60-day delay in effective date.

Enclosed is our assessment of DOE's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Daniel Cohen  
Assistant General Counsel for Legislation,  
Regulation and Energy Efficiency  
Department of Energy

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF ENERGY  
ENTITLED  
“ENERGY CONSERVATION PROGRAM:  
ENERGY CONSERVATION STANDARDS  
FOR COMMERCIAL PACKAGED BOILERS”  
(RIN: 1904-AD01)

(i) Cost-benefit analysis

The Department of Energy (DOE) expressed the benefits and costs of the standards adopted by this final rule in terms of annualized values, among other ways. DOE estimated the implementation costs of the rule would be, at a 7 percent discount rate, \$35 million per year in increased equipment costs, or \$34 million per year at a 3 percent discount rate.

DOE further estimated that the cumulative net present value of total consumer benefit would range from \$0.558 billion (at a 7 percent discount rate) to \$1.977 billion (at a 3 percent discount rate). The agency also estimated the rule would lead to a savings of \$90 million per year in reduced equipment operating costs, \$27 million per year in reduced carbon dioxide emission reductions, and \$3.5 million per year in nitrogen oxide emission reductions at a 7 percent discount rate. At a 3 percent discount rate, DOE estimated the rule would lead to a savings of \$144 million per year in reduced equipment operating costs, \$27 million per year in carbon dioxide emission reductions, and \$5.5 million per year in nitrogen oxide emission reduction.

DOE also stated the final rule would save a significant amount of energy, estimating the amount to be 0.27 quadrillion Btu. It further stated there would be carbon dioxide, methane, sulfur dioxide, nitrogen oxide, nitrous oxide, and mercury emissions reductions.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

DOE prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for, objectives of, and legal basis for the rule; (2) a summary of the significant issues raised in response to the Initial Regulatory Flexibility Analysis; (3) a description and estimate of the number of small entities affected; (4) a description and estimate of compliance requirements, including differences in cost, if any, for different groups of small entities; and (5) significant alternatives to the rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

DOE determined the final rule may require expenditures of \$100 million or more by the private sector. Such expenditures may include (1) investment in research and development and in capital expenditures by commercial packaged boilers manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency commercial packaged boilers, starting

at the compliance date for the applicable standard. DOE stated it addressed the required analysis in the same economic analysis completed under Executive Order 12,866.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On March 24, 2016, DOE published a proposed rule. 81 Fed. Reg. 15,836. DOE received comments and addressed them in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

DOE determined the final rule contains information collection requirements (ICRs) under the Act. Manufacturers of commercial packaged boilers must certify to DOE that their products comply with any applicable energy conservation standards and DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including commercial packaged boilers. DOE requested the Office of Management and Budget (OMB) for approval of an extension of the ICR for 3 years, specifically including the collection of information proposed in the present rulemaking. DOE estimated the burden hours associated with this extension were 30 hours per company. The ICRs are associated with OMB Control Number 1910-1400.

Statutory authorization for the rule

DOE promulgated the rule pursuant to section 2461 note of title 28, and sections 6291–6317 of title 42, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

DOE stated OMB determined the final rule was economically significant and that DOE submitted the required analysis to OMB.

Executive Order No. 13,132 (Federalism)

DOE determined the rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.